cian. He showed a determination to get on. He had a savings account and a life insurance. Although they were very modest sums, the deceased was evidently disposed to be provident. It should also be noted that the deceased had worked in a shop as an assistant and had earned $150/- per month before he joined national service. We find that he would probably be a modest wage earner but for his premature death. His mother had said in evidence that the deceased was giving her $60/- every month when he was in national service. On the other hand, admittedly, the father said in evidence that the deceased had from time to time asked his mother for money. The contradiction, in our view, was minor and, in all the circumstances, does not stand in the way of an educated assessment of the loss of earnings for the "lost years". Counsel for the Appellant strongly urged us to apply a multiplier of 16 years with earnings ranging from $170/- to $200/- per month. We applied a multiplier of 15 years at an earning after expenses of $150/- per month. We accordingly awarded $27,000/- as the loss of future earnings for the "lost years".

We have, however, considered it necessary to state at the end of this judgment that the effect of our decision, reluctantly arrived at, could give rise to some undesirable consequences. It could be questioned with some justification why persons other than the actual dependants of a deceased should be unjustly enriched by an award to the estate for the "lost years". Lord Scarman in *Gammell's case* at p. 595 in fact also said:-

"My Lords, there is some disquiet expressed by judges, and understandably felt by insurers, about two aspects of the law: the 'double recovery' now possible in some cases, and the very great discrepancy which can arise, as happened in the *Furness case*, between the damages recoverable by the estate for the lost years and the damages recoverable by the dependants under the Fatal Accidents Act. Each of these possibilities may well be a mischief; certainly, a law which allows the discrepancy to arise wears the appearance of anomaly, and is unlikely to be understood or acceptable."

All but one of the Law Lords in *Gammell's case* felt constrained to call for legislative intervention to reform the law in this regard. Lord Diplock at p. 583 expressed the following view: "I join with your Lordships in thinking that it is too late for anything short of legislation to bring . . . sense and justice to the law relating to damages for death recoverable by the estate of the deceased." The U.K. Royal Commission on Civil Liability and Compensation for Personal Injury (Cmnd 7054-I, para 435) has recommended: "The loss of the victim's income in the lost years is in practice felt by those dependent on him. We think it is in their hands that the right to recover damages should lie." It is the province of our legislature to reform the law.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Chan, Goh & Co.*

LEO TENG CHOY v. BEETILE CONSTRUCTION

[D.C.A. (Rajah J.) May 31, 1982]
[Singapore – District Court Appeal No. 11 of 1981]

Contract – Agreement – For supply and laying of terrazzo tiles in HDB flat – Claim by plaintiff that tiles were inferior – Claim disallowed by lower court – Appeal allowed.

The plaintiff/appellant was the occupier of a HDB flat and the defendants/respondents were a firm of general building contractors. By an agreement dated October 11, 1979 the defendants agreed to do various works to the plaintiff's flat, which entailed the supply of terrazzo tiles and the laying, polishing and waxing thereof to the floor of the flat at $6,490 for the whole job. The samples of the terrazzo tiles that were shown to the plaintiff by the defendants before the agreement had been reached were neatly cut and in good shape. In November 1979, the plaintiff paid to the defendants a sum of $3,000 towards the contract price.

The plaintiff claimed that in breach of the said agreement, the defendants did not supply good and proper materials nor did they do the works to the said flat with all due care, skill or diligence. As a result the plaintiff commenced proceedings in the District Court for breach of contract against the defendants for $7,285, being $3,000 paid to the defendants in advance and the balance of $4,285 being the sum the plaintiff would have to incur as a result of the defendants not carrying out the said agreement. The learned District Judge dismissed the plaintiff's claim and entered judgment for the defendants in the full sum of their counterclaim. The plaintiff appealed.

Held, allowing the appeal: (1) on the question of defective terrazzo tiles the finding of the learned trial judge was against the weight of evidence. As the evidence fell, one would have thought that on the question of defective tiles the best evidence to guide him would have been that of the Managing Partner of the defendants and not a contractor who had come on to the scene much later to complete the work. It is difficult, on evidence, to understand how the learned trial judge could have found that "the claim of the plaintiff that the defendants had supplied defective tiles and was therefore in breach of the contract must necessarily fail";

(2) the appeal would therefore be allowed and the claim dismissed: the plaintiff was entitled to the sum of

$5,315 with costs against being $3,000 the sum paid by the plaintiff to the defendants and the balance of $2,315 being part of the plaintiff's claim under the Statement of Claim.

DISTRICT COURT APPEAL.

Christopher Fam for the appellant.
Paul Lee for the respondents.

Cur. Adv. Vult.

Rajah J.: The plaintiff (appellant) is the occupier of a Housing & Development Board flat and the defendants (respondents) are a firm of general building contractors. By an agreement dated October 11, 1979 the defendants agreed to do various works to the plaintiff's flat, which entailed the supply of terrazzo tiles, and the laying, polishing and waxing thereof, to the floor of the flat at an agreed price of $6,490 for the whole job. The samples of the terrazzo tiles that were shown to the plaintiff by the defendants before the agreement had been reached were neatly cut and in good shape.

Pursuant to the said agreement, the defendants commenced to carry out the work, sometime in November 1979, and the plaintiff paid to the defendants a sum of $3,000 on account of the contract price. The plaintiff says that in breach of the said agreement the defendants did not supply good and proper materials nor did they do the works to the said flat with all due care, skill or diligence. As a result the plaintiff commenced proceedings in the District Court for breach of contract against the defendants for $7,285, being as to $3,000 paid to the defendants in advance and as to the balance of $4,285 being the sum the plaintiff would have to incur as a result of the defendants not carrying out the said agreement. The defendants denied breach of contract and averred that the plaintiff had repudiated the contract and counterclaimed against the plaintiff in the sum of $1,701.90, being $4,701.90 the sum for which they claimed they had done work to the flat, less the $3,000 paid to the defendants. The learned District Judge dismissed the plaintiff's claim and entered judgment for the defendants in the full sum of their counterclaim. Against this judgment the plaintiff appealed.

In his judgment on page 67 of the record (paragraph 1) the learned District Judge had this to say, and correctly so, "At the close of the case, the court noted that it was the basis of the plaintiff's claim that the defendants had supplied defective tiles, *which claim was denied by the defendants*" (emphasis mine) and found as follows on page 68 of the record (paragraph 2) "Having regard to the evidence of Mr. Sze Siong Chua (DW3), an independent witness, which was accepted by the court the claim of the plaintiff that the defendants had supplied defective tiles and was therefore in breach of the contract must necessarily fail." At the hearing of the appeal the main ground centred on the question of whether the defendants had in fact supplied defective tiles as claimed by the plaintiff or not. On this the learned trial judge had found against the plaintiff and found the evidence of the plaintiff "far from the truth" (Page 69 of the record, penultimate line). On the question of defective terrazzo tiles the finding of the learned trial judge, in my view, is against the weight of evidence. As the evidence fell one would have thought that on the question of defective tiles the best evidence to guide him would have been that of the Managing Partner of the defendants (DW1) and not DW3, who was merely a contractor who had come on to the scene much later to complete the work. On pages 35 and 36 of the record Leow Kin Kuay (DW1) admits that "in fact all the tiles are bound to have some defects" (page 35) and that he "used these defective tiles for the plaintiff's flat." Again on page 47 of the record DW2, the site foreman of the defendants, in answer to a question by the court, admitted that all the terrazzo tiles had been chipped in some way or the other. It is difficult, in the face of these admissions against interest by the defendants, which in the circumstances must be the best possible evidence, to understand how the learned trial judge could have found that "the claim of the plaintiff that the defendants had supplied defective tiles and was therefore in breach of the contract must necessarily fail" (Page 68 of the record, paragraph 2).

On the rest of the evidence the learned trial judge's appreciation of such evidence was coloured by "the view that the plaintiff was an untruthful witness" (Page 70 of the record, paragraph 2). Having come to the conclusion that the plaintiff was an untruthful witness the learned trial judge goes on to say "On the evidence, the court was inclined to accept the defendants' version that the plaintiff had made unreasonable and excessive demands on them concerning the said works". (Page 70 of the Record of Appeal, paragraph 3).

I therefore allowed the appeal and dismissed the counterclaim and entered judgment for the plaintiff in the sum of $5,315 with costs here and below, being as to $3,000 the sum paid by the

plaintiff to the defendants at the commencement of the job and as to the balance of $2,315 being part of plaintiff's claim under paragraph 6 of the Statement of Claim (Page 9 of the record).

Appeal allowed.

Solicitors: *Cooma, Lau & Koh; Chan & Goh & Co.*

WILLIAM & JOHN (PTE.) LTD. v. ANGLO-DUTCH LIGHTERAGE CO. (1950) PTE. LTD.

[O.C.J. (Chua J.) August 11, 1982]
[Singapore – Civil Suit No. 594 of 1979]

Shipping Law – Carriage of goods by sea – Damage to goods – Claim for breach of contract and negligence against defendants.

Shipping Law – Bill of Lading – Whether defendants could invoke protection under bill of lading as agents of carrier.

The plaintiffs in this case were a trading company and the defendants were lighter owners. The plaintiffs were the owners and consignees of 4 cases of gas lighters and 1 case of gas refills shipped on board the vessel "Tobago" for carriage from Le Havre to Singapore and which were loaded in Singapore into the defendants' lighter No. SC 7773 for carriage from the vessel to the wharf for delivery to the plaintiffs.

The plaintiffs claimed against the defendants damages for breach of contract and negligence in the loading, handling, stowage, care, custody, carriage and discharge of the plaintiffs' 5 cases resulting in the damage of the said goods.

The defendants contended that they were the agents of the carrier that brought the 5 cases in question to Singapore and as such, they could not be held personally liable. The defendants relied on Article XII of the bill of lading.

Held, allowing the plaintiffs' claim: (1) the burden is on the defendants to establish that they were the servants, agents or independent contractors of the carrier;

(2) in this case the defendants had failed to establish that they were the servants, agents of independent contractors of the carrier;

(3) on the evidence the goods were despatched from the ship into the lighter in apparent good order and condition. However, when the goods were despatched from the lighter they were not in the same order and condition but were short-delivered and damaged. The loss and damage had occurred during the 5 days that the goods were in the defendants' lighter;

(4) the onus is on the defendants to show that the loss or damage did not happen in consequence of the neglect to use such care and diligence as a prudent careful man would exercise in relation to his own property. This, the defendants had failed to do;

(5) the plaintiffs had established their case and were entitled to succeed in this case.

Case referred to:

(1) *Midland Silicones Ltd.* v. *Scruttons Ltd* [1961] 2 Lloyd's Rep. 365; [1962] A.C. 446.

CIVIL SUIT.

Vivien Ang (Miss) for the plaintiffs.
Ajaib Hari Dass for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs are a trading company and the defendants are and were at all material times lighter owners, lighterage contractors, forwarding and distributing agents. The plaintiffs were the owners and/or consignees of four cases of gas lighters and one case of gas refills shipped on board the vessel "Tobago" for carriage from Le Havre to Singapore and which were loaded in Singapore into lighter No. SC 7773 of the defendants for carriage from the vessel to the wharf for delivery to the plaintiffs.

The plaintiffs' claim against the defendants is for damages for breach of contract and/or breach of duty and/or negligence in and about the loading, handling, stowage, care, custody, carriage and discharge of the plaintiffs' five cases resulting in the damage of four cases of gas lighters and one case of gas refills.

The facts are these. On or about July 26, 1974, the five cases of gas lighters and gas refills were shipped on board the vessel "Tobago" under two bills of lading numbered 76 and 77 issued by Compagnie Maritime des Chargeurs Reunis (CMCR) the owners of the vessel. The shippers were a French firm in Le Havre. The "Tobago" arrived in Singapore on September 3, 1974. The plaintiffs instructed Intermodular Transport Systems Division, a division of Cycle & Carriage Co. (Industrial) Pte. Ltd., to clear the cargo on their behalf. The plaintiffs' five cases were loaded on to the defendants' lighter No. SC 7773 on September 9, 1974. The cargo being a dangerous cargo was discharged at the explosive anchorage at Telok Ayer and delivered to Intermodular Transport Systems Division on September 13, 1974, and the five cases were brought to No. 13 Circular Road where the plaintiffs inspected the five cases. The plaintiffs noticed that the five cases were wet and some were broken. The plaintiffs then instructed Ritchie & Bisset to survey the goods.

The five cases were opened and the contents surveyed on September 14, 1974. Following the